IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

TUESDAY, THE 20TH NOVEMBER 2007 / 29TH KARTHIKA 1929

CRL.A.No. 281 of 2002()

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CC.1/2000 of III SPECIAL JUDGE (SPE/CBI)-I, ERNAKULAM

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APPELLANT:

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K.SANKAR S/O.LATE SRI.KRISHNASWAMY.N.,
RESIDING AT NO.24/1860,SARAVANA BHAVAN,
THYCAD,TRIVANDRUM.

BY ADV. SRI.M.NARENDRA KUMAR
SRI.SALISH ARAVINDAKSHAN

RESPONDENTS:

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1. SUPERINTENDENT OF POLICE,C.B.I.(SPE)
COCHIN,REPRESENTED BY ITS PUBLIC PROSECUTOR.

2. STATE OF KERALA,REPRESENTED BY
PUBLIC PROSECUTOR.

BY ADV.SRI.S.SREEKUMAR – SC FOR CBI

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 20/11/2007 ALONG WITH CRL.A.NO.285/2002, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CRL.M.P.NO.2322/2002 IN CRL.A.NO.281/2002

DISMISSED

20.11.2007. SD/- K. THANKAPPAN, JUDGE.

/true copy/

P.A to Judge

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**K. THANKAPPAN, J.**

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**CRL.A. NOs. 281 & 285 OF 2002**

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**Dated this the 20th day of November, 2007.**

**JUDGMENT**

These appeals are filed by the 1st and 2nd accused in C.C.No.1/2002 on the file of the Special Judge (SPE/CBI) – I, Ernakulam. By the impugned judgment dated 30th March, 2002, both the accused were found guilty under Section 7 of the Prevention of Corruption Act and the 2nd accused was also found guilty under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act. The 1st accused, the appellant in Crl.A.No.281/2002 was sentenced to undergo R.I for one year and to pay a fine of Rs.5,000/= with default sentence of payment of fine to undergo R.I for a period of three months under Section 7 of the Prevention of Corruption Act and the 2nd accused, the appellant in Crl.A.No.285/2002, was sentenced to undergo R.I for three years and to pay a fine of Rs.20,000/= with default of payment of fine to undergo R.I for a further period of six months under Section 13(1)(d) read with Section 13(2) and was also sentenced to undergo R.I for two years under Section 7 of the Prevention of Corruption Act. The trial court also directed the 2nd accused to undergo the

substantive sentences concurrently. The above judgment of the trial court is challenged in these appeals.

2. The prosecution case against the appellants is that while the 1st accused was working as the Inspector of Central Excise, Air Cargo Complex, Trivandrum, as a public servant, he demanded an amount of Rs.1,500/= as illegal gratification from one Dayanandhan (PW10) and from one Prakash Kumar (PW2), who were the Senior Assistant and Manager respectively of M/s. Interfreight Services Pvt. Ltd, Trivandrum, as a motive or reward for giving clearance for a wet grinder booked by one P.S. Shine. The further case of the prosecution is that the 2nd accused while working as Inspector of Central Excise, Air Cargo complex, Trivandrum, being a public servant, on 2.10.1999 at about 6 a.m he demanded an amount of Rs.1,500/= from Sri. Dayanandhan, (PW10) as illegal gratification for clearing a cargo of wet grinder and at about 10.45 a.m he accepted the bribe amount for himself and for and on behalf of the 1st accused for the above purpose and thereby the appellant in Crl.A.No.281/2002 committed an offence punishable under Section 7 of the Prevention of Corruption Act and the 2nd accused, the appellant in Crl.A.No.285/2002 committed the offences

punishable under Section 13(1)(d) read with Section 13(2) and Section 7 of the Prevention of Corruption Act, 1988. To prove the case against the appellants, prosecution examined Pws 1 to 15 and relied on Exts.P1 to P34. The prosecution also produced Mos I to VI. Both the appellants denied the charge and the incriminating circumstances brought against them by the prosecution. The 2nd accused, the appellant in Crl.A.No.285/2002, further had stated that he was made believe to receive an amount of Rs.1,500/= for repayment of a loan amount from PW2 to the 1st accused. To prove the case of the appellants, Dws 1 to 5 were examined and Exts.D1 to D15(1) were also marked. However, the trial court accepted the prosecution case and convicted and sentenced the appellants as stated earlier.

3. This Court heard in detail the counsel, Sri. Narendra Kumar and Sri. B. Raman Pillai, appearing respectively for the appellants and Sri.S. Sreekumar, the counsel appearing for the Central Bureau of Investigation. This Court also perused the records made available in these appeals.

4. Both the counsel appearing for the appellants challenged the

judgment of the trial court on various grounds. Firstly, it is contended that the trial court ought not have relied on the uncorroborated testimony of PW2 to find the appellants guilty of the offence punishable under Section 7 of the Prevention of Corruption Act. Secondly, it is contended that evidence of PW2 is not corroborated with the evidence of Pws 6, 9 and 11 to prove that the 2nd accused, the appellant in Crl.A.No.285/2002, had demanded any bribe either for himself or for and on behalf of the first accused. Thirdly, the trial court ought to have seen that prior to Ext.P2 complaint dated 2.10.1999 PW12 had received sufficient information to register a cognizable offence against the 1st accused as he had received a phone message from PW2 on 1.10.1999 that A1 had demanded an amount of Rs.1,500/= as bribe. If so, Ext.P2 complaint cannot be considered as the 1st information on which regular Crime No.25/1999 of CBI office , Kochi has been registered. Fourthly, it is contended that Ext.P9 recovery mahazer did not show any recording regarding demand and receipt of the bribe of Rs.1,5000/= on 2.10.1999 by the 2nd accused as PW12 did not offer any explanation for non mentioning of the above fact in Ext.P9. Lastly, it is contended that the procedure adopted by the trial court, in examining the witnesses

and the documents produced by the accused, is prejudicial to the accused.

5. Before considering the contentions raised by the counsel appearing for the appellants, the prosecution case revealed through the witnesses has to be surveyed in detail. Prosecution relied on the evidence of PW2 to prove the case against the appellants. This witness has stated before the court that while he was working as the Manager of M/s. Interfrieght Services Pvt. Ltd, Trivandrum, on 1st October, 1999 at about 10 a.m, PW6 one Sasankan approached him enquiring that whether a wet grinder belongs to one P.S. Shine could be sent to Dubai. PW2 agreed for sending the wet grinder and thereafter PW6 Sasankan again met PW2 and PW2 contacted the office of Air India and ascertained the charge and next available flight time and after ascertaining the above details, both Pws 2 and 10, Assistant of PW2, went to the Air Cargo complex with wet grinder. Further, this witness has stated that he directed PW10 Dayanandan to prepare shipping bill, invoice bill and other necessary documents to sent the wet grinder and PW2 also collected an amount of Rs.6,023/= from PW6. Thereafter, on filling up the documents for sending the wet

grinder, PW10 went to the Air Customs Office. At about 3.30 p.m, PW10 informed PW2 that PW9 - the Superintendent of Air Customs directed PW10 to meet the 1st accused and thereafter PW10 went to the 1st accused, the appellant in Crl.A.No.281/2002, and enquired about the correctness of the description made in the document prepared for sending the wet grinder and the 1st accused directed PW10 to make some corrections in the shipping bill to the effect that in stead of commercial cargo it has to be corrected as house hold appliances and also to correct the value shown in the document as Rs.2,500/= in stead of Rs.1,000/=. This witness has further stated before the court that while he directing PW10 to make the corrections, A1 demanded an amount of Rs.1,500/= as bribe and had stated that, if the amount of Rs.1,500/= is not brought, the grinder could not be sent and this was informed to PW2 by PW10. Thereafter, he himself took initiative to meet A1 along with PW10 and PW2 and PW10 went to the office of the Superintendent-PW9. PW2 has further stated before the court that A1 repeated his demand for Rs.1,500/= as bribe for sending the wet grinder. Even after an effort made by PW2 with A1 and as A1 was not in a position to send the cargo without payment of the amount demanded by A1, PW2 immediately

phoned the CBI Office, Trivandrum and contacted PW12, the Dy.S.P, Sri. Nandakumar Nair. The reply given to PW2 by PW12 was to the effect that PW2 would file a complaint regarding the demand made by the 1st accused and met either himself or PW13- the Inspector working under PW12. Thereafter PW2 himself had replied to PW12 that he will make one more attempt to send the cargo. Even after a 2nd attempt he could not send the cargo and as PW2 was not willing to pay the amount demanded by the 1st accused on the next day early morning namely on 2.10.1999, PW2 sent PW10 to the Air Customs Office to ascertain the export inspectors in duty during the relevant time. On enquiring about the duty, PW10 reported that A2 was in duty in the exporting section and A2 had informed him that A1 had already conveyed the demand made by him and directed PW10 to bring the wet grinder for sending the same together with the documents and the amount demanded by A1. On reporting this matter by PW10, PW2 had went to the office of PW12, the Dy.S.P, CBI, Trivandrum and filed Ext.P2 complaint alleging that the demand made by A1 on 1.10.199 was repeated by A2, who was in charge of exporting section on 2.10.199. So, PW2 as directed by PW12 went to the office along with Ext.P2 complaint with an

amount of Rs.1,500/=. It was the further case of PW2 that when he went to the office of PW12, PW 13 - the Inspector CBI and PW11 and CW3, the two Intelligent Officers of Food Corporation of India, were also present. This witness has further stated that in the presence of PW13, PW11 and CW3, Ext.P2 complaint filed by PW2 was read over to both Pw 11 and CW3 and explained the grievance of PW2 and thereafter on preparing Ext.P3 mahazar, the currency notes of Rs.1,500/= (three five hundred denominations) were smeared with phenolphthalein powder and directed PW2 to keep the notes in the pocket of his shirt and explained the result of phenolphthalein test to PW2 and the other witnesses present and PW2 also directed CW3 Sreenivasan to dip his right hand fingers in Sodium Carbonate Solution and thereafter the currency notes brought by PW2, which were smeared with Phenolphthalein powder were got touched by CW3 and again the right finger of said Sreenivasn was dipped in the Sodium Carbonate Solution and the result of phenolphthalein test was shown to PW2 and other witnesses. Thereafter PW2 was directed to go to the office of the appellants with a specific direction that to give the marked currency notes to the 2nd appellant, if he specifically demanded for the same, and all the police officers

including Pws 12, 13, the trap witnesses PW11 and Sreenivasan and other police constables were came to the office of PW2 and thereafter PW2 and PW10 along with PW11 were directed to go and meet the 2nd accused at the office of the Air Cargo Complex and hand over the marked currency notes to the 2nd accused and to give signals to PW12 and the other C.B.I Officials. This witness has further stated that himself, PW10 and PW11 went to the Air Cargo Complex and met A2. At that time, A2 asked whether the grinder is ready for sending and whether the papers were brought and also the bribe money demanded by A1. PW2 answered in affirmative and asked whether the amount shall be given at the office or at the place where they met A2 i.e., at the Air Cargo Complex namely near the Maldeep flight, where the household cargoes were kept for sending. This witness has further stated that A2 has stated to him that the amount shall be paid at the place itself and PW2 had handed over the marked currency notes to PW10 and PW10 had given the amount to A2 and on receipt of the amount, A2 had counted it and thereafter he kept the same in the back pocket of his pant and thereafter PW2 made a phone call to PW12 and PW 13 and stated that the 2nd accused had accepted the amount and he kept the same in the

pocket of his pant. Thereafter, Pws 12, 13 and other CBI Officials reached at the spot and PW12 asked the 2nd accused that whether he had received the bribe amount either from PW2 or from PW10 - an employee of PW2. To this question, according to PW2, A2 had answered that "Sir you know I suppose and then why do you ask me further?" Further case of PW2 is that thereafter PW12 directed A2 to go to his office and on preparing Ext.P9 recovery mahazer, the marked currency notes MO IV series were recovered from the back pocket of the pant of A2 and a phenolphthalein test was also conducted in the hands of the 2nd accused which proved affirmative results. After Ext.P9 recovery mahazer in the presence of other witnesses, PW13 seized certain documents from the office of the Superintendent pertaining morning over time duty, daily duty and weekly duty of Customs Inspects including A1, A2 and others and thereafter at about 12.30 both A1 and A2 were taken into custody and had searched the house of both A1 and A2 and subsequently they were arrested. The trial court considered the evidence of PW3 to prove that the cargo wet grinder was placed at the office of KSIEL - Kerala State Industrial Enterprises Limited situated at Air Cargo Complex Trivandrum for cooling and Exts.7 and 11 were also marked

through PW3. Pws 4 to 8 were examined to prove that the cargo wet grinder was brought for sending to Dubai and to prove the procedures regarding open order being issued by the Superintendent and also the circumstances under which the cargo was brought into the Air Complex for sending. The evidence of these witnesses was only for the purpose of showing the fact that PW6 had brought the cargo, namely the wet grinder, for sending in the name of one Shine, in whose name the wet grinder was booked for sending in the flight. PW9 is the Superintendent of Air Customs, Intelligence Trivandrum. He had given evidence before the court that as per Ext.P22 and P24 duty registers it could be seen that A1 was on export duty on 1.10.199 and as per Ext.P22, the morning over time duty, 2-10-1999 was assigned to A2. This witness has also stated that the normal work time of the Inspectors start from 10 a.m and ends at 5 p.m and the Inspectors may be put in over time duty in the morning from 3 a.m to 10 a.m apart from the normal daily duty and the weekly duty assigned to each of the Inspectors. PW10 was the employee working under PW2 as the Assistant of the International Air Flight Services , Trivandrum. This witness was examined to prove the alleged demand made by A1 on 1.10.199 and also the demand

made by the 2nd accused on 2.10.1999 for on behalf of the 1st accused of the bribe amount of Rs.1,500/=. This witness was also examined to prove Exts.P4, P5, P8 and other documents showing the invoices, shipping bills and other papers for sending the cargo. This witness was also examined to prove the corrections alleged to have been made on the direction of A1 on the documents for sending the wet grinder. However, this witness turned hostile to the prosecution and denied the statement given to PW2 regarding the alleged demand made by A1 or A2. The evidence of this witness has not been either discussed or considered by the trial court. PW11 is one of the trap witnesses arranged by PW12 to watch and over hear the demand and payment of the marked currency notes. This witness has stated before the court that he was at the office of PW12 when PW2 filed Ext.P2 complaint and he also had stated what had happened in the office of PW12 when PW2 had given Ext.P2 complaint. This witness was also examined to prove the alleged demand made by A2 at the time of payment of the marked currency notes to him. PW12 is the Dy.S.P who received Ext.P2 complaint from PW2 on 2.10.1999 at about 8.30 p.m. PW2 phoned PW12 on 1.10.1999 and stated that both the appellants demanded bribe for sending

the cargo and this witness had stated that he had directed PW2 to meet him with a written complaint and also with the amount demanded by the accused. This witness has further stated that PW2 on 1.10.1999 itself had stated to him that he would make one more attempt to send the cargo without paying the amount demanded by the accused. This witness also had stated that on the next day of receiving Ext.P2 complaint from PW2, PW13 had prepared Ext.P3 mahazar after having conducted a phenolphthalein test in the presence of Pws 2,11 and CW3. This witness also had stated that after giving necessary directions to PW2, he went along with other officials including Pws 13 and PW2 to the office of PW2 and thereafter Pws 2, 11 and 10 were directed to go and meet A2 at the Air Cargo Complex. This witness has further stated that on getting mobile phone message from PW2, he along with the other officials went inside the Air Cargo Complex and met A2 and asked whether A2 had received the bribe amount from PW2 or from PW10. This witness has further stated that A2 had admitted receipt of the marked currency notes and thereafter at the office of A2, Ext.P9 recovery mahazar has been prepared in the presence of the witnesses. PW12 had conducted part of the enquiry and thereafter the investigation was conducted by PW13.

This witness has also stated that he conducted investigation in the case and searched the house of A2 and A1 and they were arrested. PW13 is the Dy.S.P, who was examined to prove that he received a phone message from PW2 on 1.10.1999 as well as on 2.10.1999 and this witness has also stated that on getting the message from PW2, he had enquired about the correct antecedence of both A1 and A2 and this witness has further stated that PW12 prepared Ext.P9 and recovered the marked currency notes from the pocket of the 2nd accused. PW14 was examined to prove that he received the First Information Statement and registered regular Crime No.25/1999 on 2.10.1999 at about 2.15 p.m and had registered Ext.P30 F.I.R. This witness also had stated that he had collected Exts.P5,P6,P7 and P8, the documents showing duty and other posting particulars of A1 and A2. He had also collected Ext.P17,P17(a),P19 and P22 from the office of PW9, the Superintendent of Air Customs, Trivandrum. This witness has given further evidence before the court that MOs I to III and V were sent for chemical analysis and received Ext.P34 report from CSFL. PW15 was examined to prove Ext.31 (a)(b)(c) and (d), the location of the place of incident and the scene mahazar. PW1 was examined to prove the order of sanction for prosecuting the

appellants before the trial court.

6. The question to be considered in these appeals is whether the trial court is justified in finding that the appellants guilty of the charges framed against them. With regard to the contention of the learned counsel appearing for the appellants that Ext.P2 is not really the First Information Report of the complaint received by the office of PW12 and PW13 as there is sufficient evidence before the court to show that PW 2 had phoned to the office of the CBI on 1.10.1999 at about 4.30 p.m regarding the demand of bribe by A1 for sending the wet grinder as a reward or motive for doing his official duty. To substantiate this contention, the learned counsel for the 2nd accused argued that in Ext.P2 it is stated that A1 had demanded the bribe amount on 1.10.1999 and PW2 himself had further stated to PW13 that he may make one more attempt to send the cargo without giving the bribe demanded by A1. If the evidence of PW2 and the statement contained in Ext.P2 are considered properly, it could be seen from the evidence of Pws 12 and 13 that on 1.10.1999 itself the CBI Office have got sufficient information to register a cognizable case against the accused. That apart, it is also contended by the

counsel appearing for the appellant that if Ext.P2 has been recorded only on 2.10.1999 at about 8.45 a.m, it is not possible to reach the same at the office of CBI, Kochi to register regular Crime No.25/1999 at 2.15 p.m. The further contention of the counsel is that a definite question was put to PW14 regarding receipt of Ext.P2 complaint at his office. He had not given any information in the Kochi office either through by any special messenger or by message. PW13 had stated before the court that it was sent through a constable. If so, the contentions of the counsel appearing for the appellants that it is not possible to register regular Crime No.25/1999 at the office of the CBI, Kochi are not tenable. Further, it has also to be noted that FIR - Ext.P30 and other documents including Exts.P3, P9 and other documents were reached the court on 4.10.1999. Third being a holiday, the delay in sending those documents to the court would not create any doubt regarding registration of the crime at the CBI Office, Kochi on 2.10.1999 even though there was a contention before this Court that perusal of Ext.P2 would create doubt regarding original of information received by PW13 regarding the demand of bribe by A1. The trial court had considered this point and found that it is not possible to hold that prior to Ext.P2, there was any other

information sufficient enough to register a case against the accused. Further, it could be seen that the evidence of PW2 is to the effect that he had phoned the office of CBI, Trivandrum on 1.10.1999 at 4.30 p.m and he himself had stated that he would make one more attempt to send the cargo without considering the demand made by the accused. Hence, this Court is of the view that registration of the crime on 2.10.1999 by itself would not affect the prosecution case. The next question to be considered is whether the evidence of PW2 is enough to prove the alleged demand made by A1 and A2 as PW10 was examined to support the evidence of PW2, was turned hostile to the prosecution. In this context, it has to be noted that the trial court fully believed the evidence of PW2 regarding the alleged demand made by A1 on 1.10.1999. But the question to be considered is whether the prosecution is succeeded in proving the circumstances or the reason for meeting A1 by PW2 on 1.10.1999 as spoken to by him or not. PW2 had given evidence before the court that he was told by PW10 that when he met A1 on 1.10.1999 A1 demanded an amount of Rs.1,500/= as bribe and PW2 went to the office of PW9 - the Superintendent and tried to met A1 and this witness has further stated that he had actually met A1 on 1.10.1999 and A1 repeated

the demand. In this context, though the trial court did not considered the evidence of PW10, the evidence of PW10 is very relevant and the evidence of PW9 is also to be looked into on this aspect. PW2 had a definite case that he met A1 and at that time PW10 was also with him on 1.10.1999 at the office of PW9. But, PW10 though turned hostile to the prosecution, he had stated that both himself and PW2 tried to meet A1 on 1.10.1999 and they went to the office of PW9. But PW10 had a definite case that A1 did not allow to meet PW2 and the evidence of PW10 is also supported by PW9- the Superintendent, who had stated before the court that if shipping bill is placed for transporting cargo, the Inspectors will cheque the same and if there is any doubt, the Superintendent can order an open order of the cargo. In the case in hand, according to PW9, the open order has already been issued before 4.30 on 1.10.1999. If so, meeting of A1 at the office of PW9 after the open order has already been issued by PW9 does not arise. Hostility of a witness alone shall not be a reason to discard his evidence. This principle was laid down by the Apex Court in **State of Rajasthan v. TEG Bahadur** (2005 SCC (Crl) 218). In the above judgment the Apex Court held that "it is equally settled law that the evidence of a hostile witness would

not be totally rejected if spoken in favour of the prosecution or the accused, but it can be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence may be accepted". In the above circumstances, it is not safe to rely on the evidence of PW2 alone for the alleged demand which had been made by A1 on 1.10.1999. In this context, it is also to be noted that the evidence PW9 would show that duty of A1 was changed on 1.10.199 and original duty was assigned to one Asokan and A1 had no chance to wait after 5 p.m as his daily work was over on that day and he had not assigned any morning over time duty also. In the above circumstances, evidence of PW2 for proving the demand alleged to have been made by A1 requires much more corroboration. It has also come out in evidence that PW2 was an interested witness to prove that A1 demanded the amount on 1.10.1999 and it has come out in evidence that PW2 had already phoned the matter to the Dy.S.P on 1.10.1999 itself. If such an attitude had already taken by PW2, there is no question of any attempt to be made by PW2 for meeting A1 on 1.10.1999. So, the alleged demand is not spoken to by any other witnesses and the evidence of PW10 though declared hostile, cannot be discarded on this aspect.

PW10 had a definite case that he went to A1 only to verify the documents as directed by PW9 and he had verified it. There is no evidence to show that duty of A1 was changed on 2.10.1999 except that of PW9. The evidence of PW9 would show that the morning over time duty on 2.10.1999 was given to some other person and it was changed and given to the 2nd accused on 2.10.1999. If so, the chance for meeting A1 by PW2 on 1.10.1999 and the chance for sending PW10 to the office of Air Cargo Complex on 2.10.1999 by PW2 does not arise. Apart from that, evidence of Pws 2, 12 and 13 would show that when PW2 filed Ext.P2 complaint, he had requested to PW13 that he may be allowed to take PW10 also to the accused at the time of giving the amount as demanded by him. The evidence of PW2 does not show that information given to Pws 12 or 13 before the CBI Office has been revealed to PW10 and he was informed regarding the bribe to be paid as demanded by the accused. In the above circumstances, the alleged demand made by A1 on 1.10.1999 cannot be accepted without further corroboration of the evidence of PW2. The next question to be considered is that, the evidence of PW2 is to the effect that, he went to the office of the CBI and filed the complaint and thereafter both Pws 12 and 13 and other

officials along with Pws 2 and 11 came to the office of PW2 and even at that time also PW11 was introduced to PW10 as owner of the cargo and it was not revealed to PW10 whether PW2 had filed any complaint and he had got any intention to pay bribe to the accused. In the above circumstances, the finding of the trial court that the prosecution is succeeded in proving the alleged demand made by A1 on 1.10.1999 is not based on any legally acceptable evidence. The next question to be considered in these appeals is that recovery of MO IV series currency notes from the pocket of the 2nd accused at the Air Cargo Complex and preparation of Ext.P9 recovery mahazar. The evidence of Pws 9,11,12 and 13 would show that MOIV series were recovered from the pocket of the 2nd accused and in Ext.P9 it was described as the same currency notes which were produced by PW2 on 2.10.1999 at the office of the C.B.I along with Ext.P2 complaint. Yet another question to be considered is that whether the recovery itself is enough to prove that A2 had received the amount as illegal gratification or bribe as alleged by the prosecution or not. In this context, prosecution examined Pws 2 and 11 to show that the 2nd accused had demanded the amount on 2.10.1999 when they reached at the Air Cargo Complex. The definite case of PW2 was

that when they went to the Air Cargo Complex, A2 was standing at the place where perishable articles were exporting and they verified the articles. PW2 had stated that he straight way asked A2 that whether he should pay the amount of bribe as demanded by him at that place or the office. According to PW2, A2 had stated that, it shall be given at once and he received the amount and counted the same and put in his pocket. With regard to the demand alleged to have been made by A2 on 2.10.1999, the prosecution tried to support the evidence of PW2 by the evidence of PW11. On this aspect, the evidence of PW11 is doubtful as he has stated before the court that he was standing more close to A2 at the time of receiving the amount from PW10. He had also stated that he could not hear what conspired between A2 and PW2 and he had only heard A2 asking whether "is it ready"? Then the answer given by PW2 was only nodding his head. If so, the alleged demand made by A2 on 2.10.1999 at the Air Cargo Complex is doubtful and it is not proved beyond reasonable doubt. In this context, the evidence of PW11 would show that he was sent by PWs 13 and 12 to watch and hear the talk and see the payment of the amount by the complainant to the accused. His evidence did not give confidence to this Court that A2 had made

any demand at the time of the alleged receipt of the currency notes -MO IV series. If so, finding of the court that A2 demanded an amount of Rs.1,500/= for and on behalf of A1 is also not acceptable. In this context, a reading of Ext.P9 would also create doubt in the mind of this Court regarding the alleged demand made by A2 at the time of acceptance of the amount. In Ext.P9, there was no mention about any demand made by A2 on 2.10.1999 at the Air Cargo Complex. If so, the evidence of Pws 12 and 13 regarding the alleged demand cannot also be taken as a supporting piece of evidence as that of PW2. In this context, the counsel appearing for the appellants relied on the following decisions of the Apex Court reported in **Meena v. State of Maharashtra** (2000 SCC (Crl) 878), **Jaswant Singh v. State of Punjab** (AIR 1973 SC 707), **M.K. Harshan v. State of Kerala** (AIR 1996 SC 2178) and in **Panalal v. State of Maharashtra** (AIR 1979 SC 1191). In the first case, the court held that:

> "10. We have bestowed our careful thought on the submissions made on either side, in the light of the evidence on record. We are of the view that neither the quality of the materials produced nor their proper evaluation could, in this case, be held sufficient to convince or satisfy the judicial conscience of any adjudicating authority to record a verdict of guilt, on

such slender evidence. Indisputably, the currency note in question was not recovered from the person or from the table drawer, but when the trap party arrived was found only on the pad on the table and seized from that place only. The question is as to whether the appellant accepted it and placed it on the table or that the currency note fell on the pad on the table in the process of the appellant refusing to receive the same by pushing away the hands of PW1 and the currency, when attempted to be thrust into her hands. PW2, one of the panch witnesses, who accompanied PW1, as a shadow witness, when he tried to give the bribe, did not support the prosecution case. He has been treated hostile and his evidence eschewed from consideration by the courts below. The lady constable, Victoria, another shadow witness, who first arrived on the spot after the signal was given by PW1, was not examined at the trial. Law has always favoured the presence and importance of a shadow witness in the trap party, not only to facilitate such witness to see but also overhear what happens and how it happens also. In this case, the role of Victoria was to enter first and hold the hands of the accused immediately after the acceptance of the bribe amount and she was stated to have done that, as planned. For the reasons best known, such a vital and important witness has been withheld by the prosecution, from being examined. Jagdish Bokade, who scribed the application dated 13.8.1986 for getting copies and who admittedly was all along with PW1 and gave even the idea of lodging a complaint with the Anti Corruption Bureau, has also been withheld from being examined. The other person, who was present at the place of occurrence though cited initially as a witness, was not examined by the prosecution but later was got examined as DW1 and the evidence of this person completely belies the prosecution story. The corroboration essential in a case like this for what actually transpired at the time of the alleged occurrence and acceptance of bribe is very much

wanting in this case. Even the other panch witness, PW5 categorically admitted that even as the Inspector of Police, PW6 arrived, the appellant gave the same version that PW1 tried to force into her hands the currency note which she turned down by pushing it away, and his evidence also does not lend credibility to the case of the prosecution. The contradictory version of PW1 of the very incident when earlier examined in departmental proceedings renders his testimony in this case untrustworthy. PW3, the Head Copyist, seems to be the brain behind all this and that PW1 as well as Jagdish Bokade appear to be working as a group in this affair and despite the blunt denial by PW3, his closeness to PW1 and Jagdish Bokade stands well substantiated. All these relevant aspects of the case seems to have been completely overlooked by the courts below."

In Panalal's case (cited supra) the Apex Court held that :

"9. It will be seen that the version of the complainant that the appellant asked the complainant whether he had brought the money and that the complainant told him that he had and that the appellant asked him to pay the money to the second accused is not spoken to by the Panch witness PW3. According to Panch witness on the complainant asking the appellant whether his work will be achieved, the appellant assured him in the affirmative and the appellant told the complainant what was to be given to the second accused. It is significant that PW3 does not mention about the appellant asking the complainant whether he had brought the money and on the complainant replying in the affirmative asking the complainant to pay the money to the second accused. Omission by PW3 to refer to any mention of money by the appellant would show that there is no corroboration

> of testimony of the complainant regarding the demand for the money by the appellant. On this crucial aspect, therefore, it has to be found that the version of the complainant is not corroborated and, therefore, the evidence of the complainant on this aspect cannot be relied on".

In Harshan's case and in Jaswant's case ( cited supra) also, the same principle has been adopted by the Apex Court. In the light of the above principles laid down by the Apex Court, unless a demand alleged to have been made by the accused is not proved, it is not possible to hold that the accused had committed an offence under Section 13(1)(d) read with Section 13 of the P.C.Act. Thus the finding entered against the 1st accused under Section 13(1)(d) read with Section 13(2) is set aside and the 1st accused, the appellant in Crl.A.No.281/2002, is acquitted and the appeal is allowed. The next question to be considered is with regard to the recovery of MOIV currency notes from the body of A2. In this context, the learned counsel appearing for the respondents relied on various judgments of the Apex Court to hold that recovery of the amount from the pocket of A2 has not been disputed. Even though the demand alleged to have been made by A2 at the time is not proved, the recovery itself is sufficient to hold a presumption under Section 20

of the P.C.Act that the 2nd accused, the appellant in Crl.A.No.285/2002 had been committed an offence under Section 7 of the P.C.Act. It is established from the evidence of Pws 12 and 13 that as per Ext.P9 recovery mahazer, MO IV series currency notes were recovered from the pocket of the pant of the 2nd accused. The 2nd accused had given explanation when he was examined under Section 313 that he accepted the amount only on the reason that he was made to believe that the amount is the loan amount taken by A1 from PW2. In this context, evidence of PW9 and and Ext.P22 – the register showing morning over time duty at the exports section by the Inspectors give enough confidence to this Court to hold that the 2nd accused accepted the marked currency notes from PW2 and the explanation given by him is not acceptable as proper one. PW9 had stated before the court that as per Ext.P22, apart from the daily duty or weekly duty, an Inspector will be given morning over time duty and on 1.10.1999 evening the 1st accused and the 2nd accused came to him and had stated that A2 may be given over time duty on 2.10.1999. But the above evidence of PW9 alone would not prove that A1 had given any message or information to A2 to accept any amount from PW2 or PW10 and further it could be noted that the day duty

of A1 has been ended at the evening on 1.10.1999 itself and there was no morning over time duty for A1. In this context, the trial court had rejected the prosecution case that both A1 and A2 had prior meeting of mind to demand and accept any bribe from either PW2 or from PW10. The trial court found that the prosecution had not succeeded in proving the charge against both the accused under Section 120(b) of I.P.C. If so, the same reasoning can be adopted here with regard to the chances or the circumstances under which A1 had given any information to A2 to collect any amount from either PW2 or PW10. In the above circumstances, the question remain is only to the effect that whether information given by A2 with regard to receipt of MO IV series currency notes. Though PW10 turned hostile to the prosecution, his definite case before the court was that he never knew about the plan or the attempt of PW2 to give any amount to A2. This evidence of PW10 cannot be discarded only on the evidence that he turned hostile to the prosecution. The evidence of PW10 would show that A2 was on duty in the morning over time section of the export division on 2.10.1999. If his evidence is believed, the case of PW2 that A2 made a demand on 2.10.1999 as spoken to by PW10 has to be rejected. This Court has already found that no such demand was

made by A2 on 2.10.1999. In this context, the explanation given by A2 regarding acceptance of the amount is not acceptable to this Court and hence, this Court is of the view that the prosecution is succeeded in proving that the 2nd accused, the appellant in CrlA.No.285/2002 accepted MO IV series notes have been proved beyond reasonable doubt. If so, as per the presumption available to the prosecution under Section 20, this Court is of the view that acceptance of MO IV currency notes by A2 even though for and on behalf of A1 he is liable to be punished under Section 7 of the P.C.Act. The trial court had found him guilty under that Section and this Court see no ground to interfere with the finding of the trial court on this aspect. Accordingly, Crl.A.No.285/2002 is partly allowed and Crl.A.No.281/2002 is allowed in full.

Ordered accordingly.

Lastly the learned counsel appearing for the 2nd accused prays for leniency in imposing the punishment against the 2nd accused. The trial court had though considered this question, this Court is of the view that the case is of the year 1999 and nine years have been lapsed. In the above circumstances, a period of

one year R.I will be the sufficient punishment against the 2nd accused, the appellant in Crl.A.No.285/2002 and hence, the punishment of R.I for two years is reduced to R.I for one year.

**K. THANKAPPAN, JUDGE.**

**cl**

**K. THANKAPPAN, J.**

**CRL.A. NOs. 281 &
285 OF 2002**

**JUDGMENT**

**20th November, 2007.**